

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO

SLUSH PUPPIE LIMITED,

Plaintiff,

v.

THE ICEE COMPANY,

Defendant.

CASE NO. 1:19-cv-00189-MRB

Judge Michael R. Barrett

**SECOND DECLARATION OF DAN FACHNER IN SUPPORT OF ICEE'S MOTION  
FOR PRELIMINARY INJUNCTION**

I, Dan Fachner, declare and state the following:

1. I am over the age of 18 and have personal knowledge of the following. If called as a witness, I could and would testify competently thereto.

2. I make this declaration in support of Defendant The ICEE Company's ("ICEE") Motion for Preliminary Injunction, and specifically to correct an error in my previous declaration submitted on April 16, 2021.

3. I serve as President and CEO of J&J Snack Foods Corp., which owns 100% of The ICEE Company, and I have served as the president and/or CEO of The ICEE Company since 1997.

4. In my April 16, 2021 declaration, at paragraph 24, I stated:

I also understand that Rose Marketing, a company that sells candy, is still displaying SLUSH PUPPIE® products on its website. Rose Marketing is not an authorized licensee of ICEE, but instead appears to have been illegally authorized by SPL.

I am submitting this declaration to correct an error in that paragraph.

5. While it was correct that SPL at one time illegally authorized Rose Marketing to

sell SLUSH PUPPIE® products, by the time I submitted my declaration on April 16, 2021, Rose Marketing was an authorized licensee of ICEE, and therefore the products that appeared on Rose Marketing's website at that time (and now) were properly licensed.

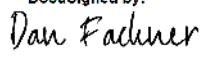
6. ICEE's licensing program for the SLUSH PUPPIE® brand is run by its licensing agent, Design Plus, which is a U.S.-based company. Design Plus has, in turn, authorized a sub-agent, called Pink Key Licensing Ltd., to identify and sign up licensees for the SLUSH PUPPIE® brand in the U.K. and certain European markets.

7. When I signed by my declaration, I was under the misimpression that Rose Marketing was still an illegal "licensee" of SPL's, and I was not aware that Pink Key and Design Plus had contacted them. I now understand that Design Plus and Pink Key identified Rose Marketing as a licensee for the SLUSH PUPPIE® brand, in part because of their prior (unauthorized) relationship with SPL. I now understand that, on October 1, 2020, ICEE entered into a licensing agreement with Rose Marketing. That agreement was signed on ICEE's behalf by Natalie Peterson, our Senior Director of Marketing.

8. After that time, I now understand that Rose Marketing developed, under the supervision of ICEE's agents at Design Plus and Pink Key, various confectionary products. Design Plus and Pink Key authorized the use of the SLUSH PUPPIE® brand on those products, and Rose Marketing was then free to sell them to the public. Rose Marketing started offering properly licensed SLUSH PUPPIE® products in the first quarter of 2021.

9. Therefore, the products currently shown on the Rose Marketing website are properly licensed by ICEE and are not infringements.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 24, 2021.

DocuSigned by:  
  
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Dan Fachner